



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 18, 2004

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Plaza Center, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2004-4079

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201799.

The El Paso Police Department (the "department") received a request for all police records concerning the requestor. You state that you are in the process of releasing some of the records. You claim that some of the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the biometric identifiers in Exhibit B are excepted from disclosure under section 560.003 of the Government Code. Section 552.101 encompasses sections 560.001, 560.002, and 560.003 of the Government Code, which govern fingerprint information and provide:

Sec. 560.001. DEFINITIONS. In this chapter

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Thus, pursuant to section 552.101 and section 560.003, the department must withhold the fingerprint information in Exhibit B unless section 560.002 permits its disclosure.

Next, you claim that section 261.201 of the Family Code is applicable to Exhibit D. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You assert that Exhibit D relates to an allegation of sexual abuse of a child. Based on your representations and our review of the documents, we conclude that this information falls

within the scope of chapter 261 of the Family Code. Therefore, we find that you must withhold Exhibit D from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also contend that the Exhibits G, H, and I are confidential under section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former Fam. Code § 51.14(d) excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74<sup>th</sup> Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Exhibits G, H, and I contain reports that involve juvenile offenders and concern conduct that occurred before January 1, 1996. Since none of the exceptions to former section 51.14(d) apply in this instance, we conclude that the department must withhold Exhibits G, H, and I from disclosure pursuant to section 552.101 in conjunction with former section 51.14(d) of the Family Code.

We also note that Exhibit B contains social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the submitted information are confidential under section 405(c)(2)(C)(viii)(I), and are therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution the department, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, you should ensure that the numbers were not obtained or maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Next, you claim that Exhibits E and F are excepted from disclosure under common law privacy. Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, in those instances where the requestor knows the identity of the victim, the governmental body is required to withhold the entire report. Open Records Decision Nos. 393 at 2 (1983); 339 (1982). In this instance, the requestor knows the identity of the alleged victims. Thus, withholding only identifying information from the requestor would not preserve the victims' common law right to privacy. Therefore, the department must withhold Exhibits E and F in their entirety under section 552.101 of the Government Code in conjunction with common law privacy.

Finally, you claim that the Texas motor vehicle information in Exhibit B is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the information that the department must withhold pursuant to section 552.130 of the Government Code.

In summary, you must withhold the fingerprint information pursuant to section 552.101 and 560.003 unless section 560.002 permits its disclosure. You must withhold Exhibit D under section 261.201 of the Family Code and Exhibits G, H, and I under former section 51.14(d) of the Family Code. The social security numbers may be excepted from disclosure under federal law. Exhibits E and F must be withheld in their entirety under common law privacy. Finally, the marked motor vehicle information must be withheld under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Melissa Vela-Martinez  
Assistant Attorney General  
Open Records Division

MVM/sdk

Ref: ID# 204799

Enc. Submitted documents

c: Mr. Jose Barragan  
3426 Montana Avenue  
El Paso, Texas 79903  
(w/o enclosures)